businesses are run is one of mutual benefit unattended by the risk, speculation and uncertainty which make lotteries void, but I am unable to agree with him that the ordinance is not intended to cover cases where under the cloak of a commercial transaction or investment there exists a method or device for the distribution of money or money's worth by chance or lot. In England common gaming houses, common betting houses and lotteries are dealt with in separate statutes. The local ordinance is designed to suppress both common gaming houses and lotteries and includes in the former "any place kept or used for the purpose of a public lottery." The ordinance then goes further than the English Acts and expressly defines "lottery" as including "any game method or device whereby money or money's worth is distributed or allotted in any manner depending upon or to be determined by chance or lot, whether the same is held, drawn, exercised or managed within or without the Colony."

It is difficult to conceive of a definition which could be framed in wider terms and it seems to me that the ordinance is clearly intended to strike at the mischief of any transaction or scheme which introduces an element of risk, speculation and uncertainty tending to financial loss to or may be the ruin of those who may thus be attracted to subscribe.

Mr. Knowles has submitted that if the Legislature wishes to suppress such transactions as the one in dispute special legislation for the purpose should be introduced. I am unable to subscribe to this view and I would state the position thus: if the Legislature did not contemplate the suppression of such transactions by Ordinance No. 45 then legislation would or should have been enacted to take such transactions out of the scope of that Ordinance which in my view so clearly embraces them.

The appeal will be allowed and the order of acquittal set aside with a direction to the Magistrate to re-open the proceedings and to call upon the respondents to enter upon their defence and in default of the respondents so entering upon their defence, with a direction to convict on such charges as the Magistrate may hold to have been otherwise substantiated by the evidence.

Appeal allowed.

[ORIGINAL CIVIL JURISDICTION]
WHITLEY, J.
August 23, 1934.

MEENAMBAL (f) ..... **Plaintiff**

v.

TAN KEE CHONG ..... **Defendant**

[PENANG SUIT No. 233 of 1933]

Practice — attachment before judgment — order for attachment amended — jurisdiction to amend—seizure of attached property after judgment—conveyance of property to a third party after date of attachment but before judgment obtained—validity of conveyance—Civil Procedure Code, Ss. 639, 309, 588, 602, 619 and 632.

In a suit against the administrator of the Estate of a deceased debtor the plaintiff obtained an order to attach before judgment certain immoveable property standing in the name of the deceased. Another lot of land belonging to the deceased was subsequently discovered and, on the plaintiff's application, the Court made an order amending the previous order by including in the Schedule thereto the second lot of land. In December 1930 the amending Order was registered in the Registry of Deeds against the property thereby covered.

Judgment was entered for the plaintiff against the administrator of the deceased's estate in June, 1931. In the same month the plaintiff obtained an order attaching the deceased's interest in the said land. This order was also registered in July 1931. In April, 1931, however, the administrator had conveyed the land under attachment to the defendant. The plaintiff sought to have the conveyance set aside.

Held, that the Court had jurisdiction to amend the order for attachment and that accordingly the amending Order took precedence over any subsequent dealings with the property against which the order was registered.

Held, that a Writ of Seizure & Sale, so far as it concerns immoveable property, is executed by the Sheriff as soon as the order attaching the interest of the judgment debtor therein is registered and notice of registration given to him, and it is immaterial whether or not the seizure is completed by the sale of the property seized.

ACTION tried before Whitley, J. on the 1st and 2nd days of August, 1934.

de Buriatte (*P. Somasundrum* with him) for plaintiff.

Conaghan for defendant.

Cur. Ad. Vult.

WHITLEY, J.—The admitted facts in this case were shortly as follows:

The plaintiff is a Hindu woman the widow of a railway coolie and the defendant is a Government Pensioner. Both reside at Bukit Mertajam. The plaintiff deposited a sum of $1,600 with A.K.M. Kumarapa Chetty. He died in 1927 and in September, 1930, the amount due from his estate to the Plaintiff in respect of principal and interest was $2,183-75. She demanded payment without success and instructed her Solicitor Mr. Somasundrum to take proceedings. A Writ was issued and on the 8th September, 1930, she obtained an Order under section 689 of the Civil Procedure Code for attachment before Judgment of the immovable property of the firm as set out in the schedule to the Order. The Plaintiff's father subsequently discovered that the firm owned another piece of land namely Lot 324 Mukim 10 Central District Province Wellesley which was not included in that schedule and she thereupon applied for a further Order attaching this Lot, and on the 28th October, 1930, an Order was made amending the previous Order by adding this Lot to the

schedule. The schedule was amended accordingly and the Order was registered against Lot 324 in the Registry of Deeds on the 17th December, 1930.

On the 15th June, 1931, the Plaintiff recovered Judgment in the Suit for $2,320.81 and costs. The Plaintiff sued out a Writ of Seizure and Sale and on the 20th June, 1931, obtained an Order attaching the interest of the deceased in the land. This Order was registered on the 1st July, 1931, but the land was not sold because the administrator had in April, 1931, executed a Conveyance of Lot 324 to the Defendant and subsequently the Estate became bankrupt.

The circumstances leading up to this Conveyance to the defendant were as follows:

In 1926, 1927 and 1928 the Defendant deposited $37,000 with the same Chetty and the Chetty deposited certain title deeds with the defendant by way of security. In October, 1928, the Chetty having died, the administrator paid off part of this sum and as security for the unpaid balance he deposited with the defendant the title deeds to four other pieces of land including Lot 324. In April, 1931, the defendant went into accounts with the administrator and a sum of $26,750 was found to be due to the defendant. In satisfaction of this sum the administrator conveyed to the defendant Lot 324 and two other pieces of land, the defendant retaining the title deeds thereto. He handed the remaining title deeds which he held as security either to the administrator or to Mr. Goh a solicitor. The circumstances of this latter transaction are in dispute and I will deal with them when I come to consider the defence of acquiescence. The Plaintiff claims that the conveyance of Lot 324 to the Defendant was fraudulent or void as against her by reason of her prior registration of the Order attaching before Judgment. In his defence the Defendant pleaded that his rights as an equitable mortgagee by deposit could not be displaced by any act of the Plaintiff but at the trial Mr. Conaghan abandoned this point. It is clear that if the Plaintiff has a statutory charge it must take priority over an unregistered equitable charge (*Tan Yow Kee* v. *Chop Teck Hwai*, 1933 Mal.L.J. 53).

At the trial the first point upon which the defendant relied was that the Court had no jurisdiction to make the Order of the 28th October, 1930, amending the Order of the 8th September, 1930, and that accordingly the amendment is a nullity and of no effect. If this contention was well founded it disposes of the Plaintiff's case as it was this amending Order which created the Statutory Charge on Lot 324 upon which she founds her claim. Section 309 of the Civil Procedure Code reads as follows

"Clerical mistakes in judgments or orders or errors arising therein from any accidental slip or omission, may at any time be corrected by the Court or a Judge on motion or summons without an appeal." The most recent case on that section is *Savena Supramaniam Pillay* v. *Tan Kah Chiat*, reported in the Malayan Law Journal June, 1934, page 133 in which it was held that when a Plaintiff who sued a Defendant as administrator had entered up a default judgment against him *simpliciter* the Court had no jurisdiction by means of a "slip order" under this section to amend this to a form of Judgment *de bonis testatoris*. That case is however clearly distinguishable from the present one inasmuch as the amendment then made altered the whole effect of the original judgment. Whereas the amendment made here did not alter the effect of the original Order at all. It is accordingly necessary to refer to the English cases.

Section 309 of the Civil Procedure Code is taken from Order 28 Rule 11 the wording of which is identical. In the case of *Mullins* v. *Howell*, 11 Ch. D. 763 Jessel, M.R. took the view that the Court had a larger discretion as to altering Orders made on interlocutory applications than as to those which are final judgments and in *Ainsworth* v. *Wilding*, (1896) 1 Ch.D. 673 Romer, J. speaking *obiter* was inclined to take the same view as he observed that different considerations would probably apply to Orders, even if drawn up, which were merely interlocutory; but in view of the dicta in *Kelsey* v. *Downe*, (1912) 1 K.B. 482 it would seem safer to assume that interlocutory orders stand in the same position as final orders. The broad principle laid down by the rule is stated in *Preston Banking Company* v. *William Allsup & Sons*, (1895) 1 Ch.D. 141 to be that the Court has no jurisdiction to rehear or alter an order after it has been passed and entered provided that it accurately expresses the intention of the Court but it would appear that a distinction must be drawn between altering an order and making what is in effect a supplemental order. In the course of his judgment Lindley, L.J. at page 144 made the following observation,

> "If this summons had proceeded on the theory that the order of 11th July, was right and that circumstances had since occurred which had rendered a supplemental order necessary the Court might have entertained the application but this summons proceeds on the theory that the order of 11th July is wrong."

These words aptly describe the position in the present case. The circumstances which had since occurred and which rendered a supplemental order necessary was the discovery by the Plaintiff that the Chetty possessed other property which she was entitled to attach.

In *Teil* v. *Barlow*, 3 De G. & S. 426 the defendants moved to vary a decree which had been passed and entered and the Lords Justices held that they were not precluded from doing so inasmuch as the defendants had subsequent to the entering of the decree discovered a most material fact, which new discovery formed the basis of the motion. That case was decided in 1863 prior to the Judicature Act but the words of Lindley, L.J. which I have just quoted tend to show that it is still good law.

In *Edmonds* v. *Robinson*, (1885) L.R. 29 Ch.D. 170 the Court refused to add a further inquiry to a judgment one of the reasons given by Kay, J. being that there had been no suggestion "that any new facts had been discovered or anything of the kind." The learned judge went on to discuss under what circumstances the Court would add to an order which had been passed and entered and gave as an example that when in an administration action the judgment gave no relief on the footing of wilful default the Court could later, if evidence of wilful default first emerged in the taking of accounts direct further accounts to be taken on that footing, this being in the nature of supplementary relief granted upon the ground which induced the Court generally to give leave to file a supplementary bill, namely because of new facts having been discovered since the decree was made.

Applying these principles I am satisfied that the Court had jurisdiction to make the amending order in the present case. In her affidavit sworn on 27th October, 1930, the plaintiff after referring to the original order states that she had "since discovered" that Lot 324 belonged to the Chetty and prayed for an order that it might be secured as a pledge or security to answer her claim. A new fact had been discovered and the Order to amend by adding Lot 324 to the schedule was really a supplemental order. It did not alter the effect of the original order at all: I accordingly hold that the defendant's contention on this point fails.

The defendant's second point is that on the 22nd July, 1933, the date of the Writ of Summons the plaintiff was no longer in a position to bring this action for the following reasons. Her action is founded on the Writ of Seizure & Sale. It was argued that this Writ of Seizure and Sale was never executed inasmuch as it was not completed by sale of the land and that as it was not renewed under section 588 of the Civil Procedure Code it remained in force for one year only and had accordingly expired before the issue of the Writ of Summons.

I can see no substance in this point. Section 588 (1) reads as follows:—

> "A writ of execution if unexecuted shall remain in force for one year only from its issue, unless renewed in the manner hereinafter provided."

The words used are "if unexecuted" but Mr. Conaghan argued as though the words used in section 588 were "if not completed by seizure and sale." If the legislature had intended that it would have used appropriate words. The cases of *In re Ford* (1900) 1 Q.B. 264 and *Burns* v. *Brown*, (1895) 1 Q.B.D. 324 upon which he relied are not relevant because they turn on section 45 (1) of the Bankruptcy Act 1883 in which the words are "completion of the execution" and section 45 (ii) which provides that for the purposes of the Act an execution against goods is completed by seizure and sale.

Sections 602, 619 and 632 of the Civil Procedure Code make it clear that in the case of immoveable property a Writ of Seizure and Sale is executed by the Sheriff registering the order attaching the interest of the judgment debtor and giving him notice of such registration. In *Skey* v. *Carter*, 11 M. & W. 571 Tindal, C.J. drew a distinction between an "execution completed by sale" and an execution levied by seizure only and in *Cheston* v. *Gibbs*, 12 M. & W. 111 it was held that to speak of a writ of execution as executed and levied is to use synonymous terms signifying seizure.

I am of opinion that the Writ of Seizure and Sale was duly executed by the Sheriff who has been unable to sell the land because of the conveyance to the defendant. The Writ is still in force and Section 588 has no application.

Finally the defendant contended that the plaintiff is estopped by acquiescence. The evidence which he led on this point purported to show that in April 1931 the estate of the deceased Chetty was in difficulties. Plaintiff and defendant were both pressing for satisfaction of their claims. Plaintiff already had her order attaching before judgment and the defendant held certain title deeds as security to which I have already referred. A meeting took place at the office of Mr. Goh who was acting as solicitor for Rahman Chetty the administrator at which there were present Mr. Goh, Rahman Chetty, Defendant and one Krishnan Pillay. The plaintiff is alleged to have come with the others to the office and to have remained downstairs. Admittedly she took no part in the discussion nor in the other discussions alleged to have taken place at Rahman Chetty's house. At the meeting an arrangement was made—or, as Mr. Goh puts it, a previous arrangement confirmed—whereby defendant was to give up the deeds to a piece of rubber land belonging to the estate and this piece of rubber land was then to be conveyed to the plaintiff in satisfaction of her claim. In return the plaintiff was to hand to Mr. Goh for Rahman Chetty $1,000 being the difference between the amount

of her claim and the value of the land. Krishnan Pillay was to ask Mr. Somasundrum, plaintiff's solicitor, to get Lot 324 released from attachment and Rahman Chetty was to convey Lot 324 together with other land to defendant in satisfaction of his claim. The Plaintiff denies having consented to or indeed having any knowledge of any such arrangement. The defendant and Mr. Goh both say that they regarded Krishnan Pillay as acting for her in the matter but the evidence of any authority so to act is very vague and slender. I have no doubt that negotiations did take place and that efforts were made to persuade the plaintiff to release the attachment.

A letter was put in which was received by the Official Assignee dated 2nd December, 1931, and purporting to bear her thumb impression. At first she denied having sent this letter but later she wavered and I think the probability is that it was written by someone on her behalf, she being an ignorant woman, unable to read or write. In that letter the negotiations are described and it is stated that the defendant personally undertook to pay the money due from the Chetty to the plaintiff if she would consent to the conveyance to him. The defendant denies having given any such undertaking but if any definite arrangement was concluded which seems doubtful I consider that the probability is that it is more correctly stated in that letter than in the version now put forward by the defendant.

However that may be the onus is upon the defendant to satisfy me that there was such acquiescence on the part of the plaintiff as amounts in law to estoppel. He has failed to do so. The circumstances which must be present in order to raise such estoppel are concisely set out in *Halsbury* 1st Edition Vol. 13 page 167. One of them is that there must be a mistaken belief on the part of the defendant on the faith of which he expends money or does some act. That element is not present here. The defendant was aware of the attachment and of the whole of the facts of the case. Furthermore I find that if any arrangement was made the defendant had failed to carry out his part of it and that as far as the plaintiff is concerned there has been a total failure of consideration.

There will be judgment for the plaintiff in the terms of the prayers in the Statement of Claim with costs.

Liberty to apply in respect of prayer (c).

Judgment accordingly.

Solicitors for the Plaintiff—*Sundrum & Khoo.*

Solicitors for the Defendant—*Wreford & Thornton.*

[CIVIL DISTRICT COURT JURISDICTION]

BULL, D.J.

June 13, 1931.

[SUPREME COURT APPELLATE CIVIL JURISDICTION]

SPROULE, Ag. C.J.

September 13, 1931.

SIMPSON, J. October 2, 1931.

In the matter of District Court Distress Case No. 1749 of 1931.

and

In the matter of the application of one Yeo Wee Sui made in the said matter

and

In the matter of section 13 (1) of Ordinance No. 101 (Courts).

SHAIKH SAHIED BIN TALIP BIN JAAFAR BIN TALIP.....Plaintiff.

v.

KHOO KANG CHEK.....Defendant.

[S'PORE DISTRICT COURT DISTRESS No. 1749 of 1931]

[SINGAPORE ORIGINATING MOTION No. 6 of 1931]

Distress — Goods of sub-tenants, whether liable to seizure—"Apparent possession"—Civil Procedure Code, S. 725.

Property found on certain premises was seized by the Bailiff of the District Court under a Writ of Distress to recover the arrears of rent of the premises due by the tenant. Certain persons claiming to be sub-tenants of the tenant, applied for the release of the property seized on the ground that such property was theirs and had been seized in that part of the premises occupied by them as such sub-tenants.

Held, by Bull, D.J., that the property in question was in the apparent and actual possession of the sub-tenants and not in the "apparent possession" of the tenant within section 725 of the Civil Procedure Code, and must be released as not being liable to seizure.

Upon revision by the Supreme Court under the jurisdiction conferred by section 13 (1) of Ordinance No. 101 (Courts).

Held, by Simpson, J., upholding the decision of Bull, D.J. (Sproule, Ag. C.J., dissenting) that "apparent possession" in the section above referred to means physical possession, as distinguished from possession in law or constructive possession and that the person whether the tenant or sub-tenant who upon inquiry is found to be in physical occupation of any part of the premises is deemed to be in apparent possession of the goods seized in such part of the premises and therefore the property in question was not in the "apparent possession" of the tenant for the purpose of section 725 of the Civil Procedure Code and was not liable to seizure.

Held, by Sproule, Ag. C.J., that the law as enacted in Section 725 is not intended to affect the landlord's common law lien over all such goods as are in the manifest or ostensible possession of the tenant nor to exempt the goods of strangers (whether sub-tenant or not) found upon the demised premises from being levied in distress for arrears of rent.

The Court consisting of two judges not agreeing, the Judgment of the District Judge stands.